

REMARKS

Applicants have carefully reviewed the Office Action mailed on February 18, 2004. Applicants respectfully traverse all objections, rejections, and assertions made by the Examiner. With this amendment, claims 1 and 10 are amended. Please cancel claims 3-5 and 12-14 without prejudice. Claims 19-21 are withdrawn from consideration. Claims 1-2, 6-12, and 15-18 remain pending.

The Examiner has asserted that restriction to one invention is required under 35 U.S.C. 121. A provisional election of invention I, corresponding to claims 1-18, was made on January 16, 2004. Applicants hereby affirm this election.

The Examiner has objected to the drawings. The Examiner has indicated that Figure 2 on page 1 of the drawings should be re-labeled Figure 3. Attached herewith is a replacement sheet where Figure 2 is re-labeled as Figure 3. Applicants respectfully submit that this amendment overcomes the objection.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4). The Examiner has indicated that reference numbers "21" and "28" have both been used to designate the crystals and that reference number 21 is not described in the specification. Attached herewith is replacement sheet for Figure 2A where reference number 21 is replaced by reference number 28. Accordingly, Figure 2A and the corresponding sections of the specification that describe it now have like reference numbers. Applicants respectfully submit that this amendment overcomes the objection.

The disclosure is objected to because of informalities. The Examiner made the following recommendations:

On page 7, line 9 should read a single manifold "port" 18 not portion.

On page 12, lines 20 and 21, the reference number following “curved regions” should be 22 not 32.

On page 13, line 3, the reference number following “regions” should be 22 not 20.

On page 17, line 22, the reference number following “member” should be 44 not 42.

On page 17, line 23, the reference number following “assembly” should be 10 not 16.

The specification is now amended as suggested. More particularly, the paragraphs beginning at line 9 of page 7 (to address the first suggestion), line 17 of page 12 (to address the second and third suggestions), and at line 16 of page 17 (to address the fourth and fifth suggestions) have been replaced. Applicants respectfully submit that these amendments overcome the objection.

Claims 1-3, 6-12 and 15-18 are rejected under 35 U.S.C. §102(b) as being anticipated by Ju et al. in U.S. Patent No. 5,599,325. Claims 3 and 12 are cancelled. Regarding claims 1-2 and 6-9, amended claim 1 now recites that the nucleating agent can be talc, silica, kaolin, molybdenum disulfide, iron sulfide, sodium phenylphosphanate, sodium p-tert-butylbenzoate, monton wax, montanic ester salts, salts of monocarboxylic acids and polycarboxylic acids, an ethylene and an acrylic ester copolymer, a fumeric acid polymer, ethylene, propylene, 1,4-hexadiene, norbornadiene, or mixtures thereof. Titanium dioxide is not part of the claimed nucleating agents. Ju et al., as indicated by the Examiner on page 7 of the Office Action, fail to disclose any other “nucleating agents”. Accordingly, Ju et al. cannot anticipate claim 1. Because claims 2 and 6-9 depend from claim 1, they are also not anticipated based on this amendment and because they add significant elements to distinguish them further from the prior art.

Regarding claims 10-11 and 15-18, claim 10 has been similarly amended to recite a list of nucleating agents. As stated above, Ju et al. fail to disclose any of these nucleating agents.

Therefore, claim 10 as well as claim 11 and 15-18 depending therefrom cannot be anticipated by Ju et al.

Claims 4-5 and 13-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Ju et al. in view of Muni et al. in U.S. Patent No. 5,316,706 and further in view of Jansen (Nucleating agents for Partly Crystalline Polymers). These claims are now cancelled. Their subject matter, however, is incorporated into independent claims 1 and 10. Applicants respectfully submit that the obviousness rejection cannot be properly transferred to amended claim 1. This is because there is no motivation to combine Jansen with Muni et al. and Ju et al. to arrive at the claimed invention. Because there is no motivation to combine the references, a prima facie case of obviousness cannot be properly established.

Motivation to combine references can come from three sources: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. MPEP §2143.01. Here, the first source appears to be dispositive. The problem being solved by Applicants' claimed invention is reducing "cracking" or crystalline fractures adjacent the curves in a catheter without significantly affecting flexibility (please see, for example, page 4, line 21 through page 5, line 4). In trying to establish a prima facie case of obviousness, the Examiner relied on teachings within Muni et al., which suggest that changing the crystalline structure of polymers in a catheter changes the stiffness of the catheter. Muni et al. at column 2, lines 45-48. The Examiner then relied on Jansen for examples of agents capable of changing the crystalline structure of polymers. Collectively, these teachings were combined with Ju et al. to arrive at the claimed invention. None of these references, however, address the problem of cracking or crystalline fractures adjacent the curves in a catheter without affecting flexibility. Instead, Muni et al. teach that changing the crystalline structure can be utilized to alter the

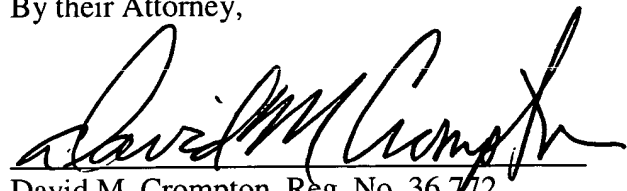
flexibility characteristics of the catheter. Because altering the crystalline structure alters the flexibility of Muni et al. device, they explicitly teach away from the claimed invention. Accordingly, it would not be obvious to combine Muni et al. with Ju et al. and/or Jansen to arrive at Applicants' claimed invention.

In addition, the changes in crystalline structure that are achieved by Muni et al. are the result of specific thermal treatments. Thus, no "nucleating agent" is used to achieve the desired effect. Nothing in the Muni et al. disclosure teaches or suggests the use of a nucleating agent. Therefore, it would not be obvious to replace the thermal treatments in Muni et al. with the agents disclosed in Jansen in order to arrive at the claimed invention.

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,
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By their Attorney,

Date: 5/18/04


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Attachment: Two Replacement Drawing Sheets